

TOWN OF TIVERTON
ZONING BOARD OF REVIEW MINUTES

MAY 2, 2007

The following petitions were received and were heard by the Tiverton Zoning Board on Wednesday, May 2, 2007 at 7:30 p.m. at the Tiverton Town Hall, 343 Highland Road

Members present: Chairman David Collins, Jay Jackson, Susan Krumholz, Lise Gescheidt, Raymond Lafazia and Michael Fairhurst.

Also present were: Peter Ruggiero, Town Solicitor, Gareth Eames, Building Inspector and Sally Ferreira, Court Reporter.

1. An appeal has been filed by John & Eileen Moran et al appealing a decision of the Building Official to issue a building permit for a new yacht club structure dated December 1, 2006 at 58 Riverside Drive, Tiverton RI being Block 70 Card 5 on Tiverton Tax Assessor's maps and located in a R40 zone.

***Mr. Ruggiero reminded the board members there was an appeal taken on the building official's building permit and subsequent to the filing of that appeal, the parties took a complaint in the Newport Superior Court that is now pending.

Mr. Ruggiero informed the Board there is a trial set for next week on this matter and he is recommending this Board continue this to the June 6th meeting. Mr. Ruggiero stated hopefully there will be some decision from the court by then to help guide this Board as to the next step.

Mr. Ruggiero also stated the parties are aware of this and they have all agreed to continue this matter that there is no objection. The Chairman entertained a motion to that affect. Ms. Krumholz made a motion to continue this appeal to the June 6th meeting. Mr. Jackson seconded. The Chairman recused himself from the vote and asked Mr. Jackson, the Vice-Chairman, to take the vote. Mr. Jackson took the vote and it was unanimous. Voting were: Mr. Jackson, Ms. Krumholz, Ms. Gescheidt, Mr. Fairhurst and Mr. Lafazia.

2. An appeal has been filed by David M. & Kathleen Campbell appealing a decision of the Building official to issue a building permit for a new yacht club structure dated December 1, 2006 at 58 Riverside Drive, Tiverton, RI being Block 70 Card 5 on Tiverton Tax Assessor's maps and located in a R40 zone.

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3. A petition has been filed by Edward and Cheryl Saber of 914 Lake Road, Tiverton, Rhode Island requesting a variance to Article VI Sections 1 and 3 of the Tiverton Zoning Ordinance in order to construct a two-story garage with deck located at 914 Lake Road, Tiverton, Rhode Island Block 219 Card 5 on Tiverton Tax Assessor's Maps whereby causing an accessory structure to occupy the front yard of the premises in an R-80 district.

DECISION: Ms. Gescheidt recused herself based on the fact that she is an abutting owner to the Saber's property. The Chairman stated that the first alternate, Mr. Lafazia, will be sitting in for Ms. Gescheidt.

Mr. Saber stated he came before this Board for a variance in January of this year which was granted but didn't realize that he had to illustrate the rectangular shaped garage. Mr. Saber informed the Board the reason he needs to construct a rectangular shaped garage is to store equipment needed to maintain his yard as opposed to storing them in the garage whereby taking away a complete space for a car.

The Chairman asked Mr. Saber if his request for a new variance was for a bigger structure that would include the 3 foot overhang on the north side, the 10 by 12 structure on the east side and the deck on the south side and Mr. Saber answered in the affirmative.

The Chairman asked Mr. Eames for his input on the matter. Mr. Eames stated when Mr. Saber came in to obtain a building permit after having received relief by the Board in January, the plans that he presented didn't match to what had been granted. Mr. Saber presented the Board with the exact architect design.

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Mr. Fairhurst asked Mr. Saber if he is going to have water or electric service in the building and Mr. Saber answered he would definitely have electric. Mr. Lafazia asked Mr. Eames if this petition would comply with Article VI Section 1 and Section 3 and Mr. Eames answered that was subject to the original variance which was granted in January and the petitioner is here tonight because the size of the building has changed.

In summary Mr. Saber stated the only reason he needs the bump out is because the only way he can maintain his yard is by using a regular push lawn mower and edge trimmers and weed whackers and if he stores those items in the garage, it will take away the full space needed for a car. Mr. Saber went on to say there is a good sized aged tree that he would rather not take out of the ground if he didn't have to. Mr. Lafazia asked if there was a matter of hardship or convenience and Mr. Saber answered it is a matter of hardship simply because over the course of a year or two due to the sap and dye from the trees on his property the trees have actually ruined the paint on his vehicles. Mr. Saber indicated he does not have any parking facility off of his driveway. Mr. Lafazia asked Mr. Saber how long he has resided at this property and Mr. Saber answered about twenty years.

Mr. Jackson stated he would be in favor of granting a variance because it's obvious from the plans, the petitioner cannot put a building anyplace else due to the fact of the septic system, some trees and the stone walls. Mr. Jackson also stated there is no encroachment on any of the set backs other than to have an auxiliary structure in the front yard.

Ms. Krumholz stated she would be in favor of granting the variance. Even though it's a huge structure the petitioner is doing it in a tasteful manner and it's far enough back from the road and it's a large enough piece of property that it's not going to be imposing. Mr. Fairhurst stated whatever logic the Board used back in January in granting this petition in his opinion he wouldn't want to fault it or go back on it because of incremental changes in the dimensions and if it was okay before, it is now. Mr. Fairhurst also stated he does not like to see accessory structures any larger than they need to be but he does not have a problem beyond that.

Mr. Lafazia stated that he is not in favor of granting the variance because in his opinion the petitioner has not complied with the requirements.

Ms. Krumholz made a motion to grant the variance to Article VI Sections 1 and 3 and allow the accessory building as presented to be built in the front yard and that at the prior hearing the petitioner established hardship. Mr. Jackson seconded. The vote was four to one. Voting in favor: Chairman David Collins, Ms. Krumholz, Mr. Jackson and Mr. Fairhurst. Voting against: Mr. Lafazia.

4. A petition has been filed by Scott Neville of the Metal Works Corp and the manager of The Tin Man, LLC of 3940 Main Road, Tiverton, RI requesting a variance to Article XIV Section 5 and Article VIII Section

3.d.1. of the Tiverton Zoning Ordinance in order to construct a partial second floor addition to the existing two story building located at 3940 Main Road, Tiverton, RI being Block 125 Card 14 on Tiverton Tax Assessor's Maps whereby expanding a legal non-conforming structure within 200 feet of a Nonquit Pond tributary located in a R80 zone.

DECISION: The Chairman stated Lise Gescheidt is now sitting again and also stated his property is pretty close to being an abutter but apparently he is not an abutter because he did not receive notice.

Mr. Raymond C. Holland, Jr. of 1540 Main Road, Tiverton, Rhode Island was present representing the petitioner. Mr. Holland went on to say The Tin Man is the owner of some real estate known where The Metal Works is on Main Road. Mr. Holland also stated it is a very small lot, it's a business that has been owned by the Neville family since 1961 and the building is non-conforming by every dimension you can probably think of.

Mr. Holland informed the Board that Scott and Gary Neville have now taken over the business of their father and they are in the process of trying to get a variance to add onto the building. Mr. Holland stated the Fire Marshall found 30 deficiencies after conducting an inspection on the property which in effect could put them out of business.

Mr. Holland further stated one of the primary problem is the Fire Marshall is requiring access and egress in places that there were none before and after you get through with complying with the Fire Marshall's list, you have a situation where you lose an awful lot of space. Mr. Holland also said they are not increasing the footprint of the property that they just want to enlarge the upstairs and move the office area up there.

Mr. Holland made the Board aware that the building is in a water shed overlay district and is very close to a Nonquit Pond tributary that runs in back of Terry Holland's office. Mr. Holland stated he was informed by Mr. Eames he would have to get a use variance to build in a water shed district.

Mr. Scott Neville was sworn in and Mr. Holland asked him questions. Mr. Neville stated he has no intention of adding any more employees and he is not looking for any more definition to the footprint.

The Chairman swore in Mr. Bill Smith, a licensed registered engineer in the State of Rhode Island and Mr. Nathan Godfrey, a real estate consultant and appraiser, who were accepted as expert witnesses. Mr. Holland asked Mr. Smith and Mr. Godfrey to state their opinions.

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Ms. Gescheidt asked Mr. Holland if any bathroom facilities would expand or change any septic requirements. Mr. Holland stated the petitioner is going to install a new septic system which would be some kind of bottomless sand filter which is a tremendous improvement in the area. Mr. Neville stated there is a septic tank there at this time.

Ms. Rosemary Eva of 4019 Main Road addressed the Board as a private citizen, a taxpayer and life long resident of Tiverton. Ms. Eva stated she received a copy of the agenda and was very concerned that there was no specific mention of a water shed only a statement that referenced a variance to Article VII Section 3.d.1. and a phrase within 200 hundred feet of a Nonquit Pond tributary located in a R80 zone. Ms. Eva went on to say this may be very deceiving to laymen who may not have access to the zoning ordinance when reading the agenda.

Another one of Ms. Eva's concerns is safety which she stated was not mentioned. Ms. Eva explain to the Board when a delivery takes place or when there are pedestrians trying to walk around parked trucks, at times large tractor trailer trucks have to park on Main Road taking up one lane and there are no sidewalks in this area, that this is extremely dangerous and sometimes treacherous for pedestrians.

Ms. Eva asked the question if the Board grants this variance for the reasons requested, would there be more deliveries and dangerous situations created and will the Board put stipulations on it?

Mr. Lafazia stated there is clearly a hardship here. Mr. Holland responded there was and that there is no other beneficial use as Mr. Godfrey testified that it couldn't be used as a single family house. The Chairman asked Mr. Smith to explain to the Board exactly where the overlay is with respect to the property in question. Mr. Smith went on to explain.

Ms. Gescheidt stated after listening to the experts that have been called by the applicant, the petition seems to meet the criteria for permission to add the second floor, however, Ms. Gescheidt stated she is very susceptible to the comments of Ms. Eva. Ms. Gescheidt further stated that whatever steps the Board takes should be conditioned upon the DEM permits and some type of stipulation regarding traffic and public safety purposes.

Ms. Krumholz asked the question what would happen if the property got sold. Mr. Ruggiero stated this use runs with the land and they could only sell to the same sort of business otherwise they would have to come before the Board to change it. Mr. Lafazia asked if a restriction could be placed on record if there are new owners. Mr. Ruggiero stated it is hard to enforce and right now the rights run with the land.

Ms. Gescheidt stated in her opinion the new septic system is going to be a tremendous improvement and protect the water shed. Mr. Jackson stated the surface that is being discussed in that area is already impervious and it's not changing and he agrees that the

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new septic system will be an additional safeguard in that area. Mr. Jackson also stated he does not see a negative impact. Mr. Jackson went on to say a hardship is being placed upon the petitioners by the State rather than anything that they're doing themselves.

Ms. Gescheidt made a motion to grant the variance and to adopt the conclusions that have been positive in Mr. Godfrey's report on page five; that the proposed use is appropriate and consistent with the existing and surrounding uses of the Comprehensive Community Plan and the zoning ordinances, that the relief is not inconsistent with nearby surrounding land uses and not contrary to public interest, that there is no part of the plan that would create a nuisance in the neighborhood or hinder or endanger any vehicular or pedestrian movement and this is not going to increase any traffic by simply adding a second floor for purpose of storage, and there appear to be adequate provisions made for water service, sanitary sewerage disposal and fire protection, and that it's compatible with the Comprehensive Community Plan for the Town of Tiverton, and a condition be placed on the variance on approval of the septic permit by DEM. Mr. Jackson seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Ms. Krumholz, Mr. Fairhurst and Mr. Jackson.

ADMINISTRATIVE ISSUES

Ms. Krumholz made a motion to accept the April 4, 2007 minutes of the Tiverton Zoning Board of Review meeting as written. Mr. Jackson seconded. The vote was unanimous. Voting were: Chairman David Collins, Mr. Fairhurst, Mr. Jackson, Ms. Gescheidt, Ms. Krumholz.

Whereupon the May 2, 2007 Zoning Board of Review meeting concluded at 9:01 p.m.

ZBR/ssf

C E R T I F I C A T E

I, Salvina S. Ferreira, Registered Professional Reporter, hereby certify that the foregoing pages 1- 7 are transcribed to the best of my knowledge, skill and ability.

I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal of office this 11th day of May, 2007.

Salvina S. Ferreira, RPR

My commission expires: September 26, 2009.

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